

# **Draft General Scheme of an Education (Admission to Schools) Bill 2013**

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## **Head 1 LONG TITLE**

AN ACT TO AMEND THE EDUCATION ACT 1998 AND TO SET OUT THE POWERS OF THE MINISTER IN REGARD TO THE ADMISSION OF STUDENTS TO SCHOOLS RECOGNISED UNDER SECTION 10 OF THE EDUCATION ACT 1998, TO REQUIRE A SCHOOL ADMISSION POLICY TO EXPLICITLY STATE THAT THE SCHOOL WILL NOT DISCRIMINATE IN ADMISSION ON THE GROUNDS SPECIFIED IN THIS ACT, TO PROVIDE FOR THE MINISTER TO MAKE REGULATIONS IN RELATION TO THE ADMISSION OF STUDENTS TO SCHOOLS, TO REPEAL SECTION 29 (1) (C) OF THE ACT OF 1998, TO AMEND SECTION 23(2)(a) OF THE ACT OF 1998 TO PROVIDE THAT IT IS A FUNCTION OF A PRINCIPAL, AS PART OF THE DAY-TO-DAY MANAGEMNT OF THE SCHOOL, TO IMPLEMENT THE SCHOOL'S ADMISSION POLICY, TO PROVIDE FOR APPEALS AGAINST REFUSALS TO ENROL TO BE MADE TO THE BOARD OF MANAGEMENT, TO REPEAL SECTION 10 OF THE ACT OF 2004, TO PROVIDE FOR THE NATIONAL COUNCIL FOR SPECIAL EDUCATION TO DESIGNATE A SCHOOL FOR A CHILD WITH SPECIAL EDUCATIONAL NEEDS AND FOR THE NATIONAL EDUCATIONAL WELFARE BOARD TO DESIGNATE A SCHOOL FOR A CHILD WITH NO SCHOOL PLACE AND TO PROVIDE FOR APPEALS AGAINST SUCH DESIGNATIONS, TO AMEND SECTION 26(1) OF THE ACT OF 2000, TO PROVIDE A POWER TO ENABLE THE MINISTER TO DIRECT CO-OPERATION BETWEEN SCHOOLS, TO PROVIDE A POWER TO ENABLE THE PATRON, OR THE PATRON AT THE REQUEST OF THE MINISTER, TO APPOINT A PERSON INDEPENDENT OF THE SCHOOL

TO OPERATE A SCHOOL'S ADMISSION POLICY, TO PROVIDE A POWER TO ENABLE THE MINISTER TO APPOINT A PERSON INDEPENDENT OF THE SCHOOL TO OPERATE THE SCHOOL ADMISSION POLICY, TO REPEAL SECTION 19 OF THE ACT OF 2000, AND TO PROVIDE FOR OTHER RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### **Explanatory Note**

The Long Title of the Bill provides that the purpose of this Bill is to set out the powers of the Minister in regard to the admission of students to schools recognised under section 10 of the Education Act 1998, to require a school admission policy to explicitly state that it will not discriminate against applicants for admission on any of the grounds specified in the Act, to amend Section 33 of the 1998 Education Act to clarify the power of the Minister to make regulations in relation to the admission of students to schools; to remove the provision in Section 29(1)(c) of the Education Act, 1998 providing for an appeal to the Secretary General of the Department against a decision of a school to refuse admission, to amend section 23(2)(a) of the 1998 Education Act to provide that it is a function of the Principal to implement the school admission policy, to provide for the right of appeal to the Board of Management of a school against a decision to refuse enrolment, to repeal section 10 of the Education for Persons with Special Educational Needs Act, 2004, to provide for the National Council for Special Education to designate a school for a child with special educational needs and for the National Educational Welfare Board to designate a school for a child with no school place and to provide for appeals against such designations, to amend section 26(1) of the Act of 2000, to provide a power to enable the Minister to direct co-operation between schools,

to provide a power to enable the patron, or the patron at the request of the Minister, to appoint a person independent of the school to operate a school's admission policy, to provide a power to enable the Minister to appoint a person independent of the school to operate the school admission policy, to repeal section 19 of the Act of 2000, and to provide for other related matters.

## **Head 2 Definitions**

**In this Act, unless the context otherwise requires—**

“Act of 1998” means the Education Act 1998;

“Act of 2000” means the Education Welfare Act, 2000

“Act of 2004” means the Education for Persons with Special Educational Needs Act, 2004

“Applicant” means the parent of the student, or in the case of a student who has reached the age of 18 years, the student who has applied for admission to a school.

“Board” means a Board of Management of a school,

“Characteristic Spirit” has the same meaning as it has in the Act of 1998.

“Centre for education” has the same meaning as it has in the Act of 1998

“Intake Group” means the intake of enrolments for the most junior class or year groupings in a school.

“Minister” means the Minister for Education and Skills.

“Parent” includes a foster parent, a guardian appointed under the Guardianship of Children Acts, 1964 to 1997, or other person acting in loco parentis who has a child in his or her care subject to any statutory power or order of a court and, in the case of a child who has been adopted under the Adoption Acts, 1952 to 1998, or, where the child has been adopted outside the State, means the adopter or adopters or the surviving adopter.

“Patron” means a patron within the meaning of section 8 of the Act of 1998

“School” means a recognised school within the meaning of section 10 of the Act of 1998

“special class” means a class grouping within a primary or post primary school which has been sanctioned by the National Council for Special Education specifically to cater for students with special educational needs.

“Special Educational Needs” has the same meaning as it has in the Act of 2004

“Student” means a person for whom an application for admission has been made.

*Explanatory Note*

This Head sets out common terms used in the Draft General Scheme.

**Head 3 Requirement that an admission policy states that the school will not discriminate in admission.**

Section 15 (2) (d) of the 1998 Education Act is hereby amended by substituting the following for subsection (2) (d)

“(2) (d) Subject to this Act and any regulations made under Section 33(g) of this Act,

- (i) publish, in such manner as the Board with the agreement of the patron considers appropriate, the policy of the school concerning admission to and participation in the school, including the policy of the school relating to the expulsion and suspension of students, and shall ensure that as regards that policy principles of inclusion, equality and the right of parents to send their children to a school of the parents’ choice are respected and such directions or regulations as may be made from time to time by the Minister, having regard to the characteristic spirit of the school and the constitutional rights of all persons concerned, are complied with,

- (ii) Ensure, subject to subsection (iii), that the admission policy of the school includes a statement affirming that the school will not discriminate against an applicant for admission on the grounds of -
  - (I) the student having a disability or special educational need;
  - (II) the student's sexual orientation;
  - (III) the student's family status;
  - (IV) the student being a member of the Traveller community;
  - (V) the student's race;
  - (VI) the student's civil status;
  - (VII) the student's gender;
  - (VIII) the student's faith or religious tradition or;
  - (IX) the student having no faith.
- (iii) In the case of -
  - (I) a school to which the provisions of Section 7(3) (a) of the Equal Status Act, 2000 apply, the statement referred to in (ii) shall not be required to affirm that it will not discriminate against an applicant for admission on the grounds of the student's gender
  - (II) a school to which the provisions of Section 7(3) (c) of the Equal Status Act, 2000 apply, the statement referred to in (ii) shall also state that the school, in accordance with Section 7(3) (c) of the Equal Status Act, 2000, does not discriminate where it admits a person of a particular religious denomination in preference to others or where it refuses to admit a person who is not of that denomination, where it is proved that refusal is essential to maintain the ethos of the school.
- (iv) In this section, "discriminate" has the meaning assigned to it in the Equal Status Act, 2000."

## **Explanatory Note**

The purpose of this Head is to require a recognised school (i.e. a school recognised under section 10 of the Education Act 1998) to include in its enrolment policy an explicit statement that it will not discriminate against an applicant for admission on the grounds of disability, special educational needs, sexual orientation, family status, membership of the traveller community, race, civil status, gender, faith or religious tradition or on the grounds of the student being of no faith. It is designed to underpin inclusiveness. Requiring schools to make an explicit statement in that regard, apart from leaving no room for ambivalence, is valuable in terms of what it communicates to prospective students and their parents. It will ensure that all applicants (including those who are less informed about their rights) will be made fully aware that the school cannot discriminate on any of the specified grounds and should help prevent the practice whereby schools put in place ‘soft’ barriers to enrolment such as those highlighted in the recently published NCSE Policy Advice Paper “Supporting Students with Special Educational Needs in Schools”. The Head amends Section 15(2) (d) of the Education Act, 1998.

The Head reinforces the principle of maximum accessibility to and inclusiveness in recognised schools but does not displace the existing exemptions provided to schools under Sections 7(3) (a) and 7(3) (c) of the Equal Status Act, 2000. Section 7(3) (a) provides that a single sex school may refuse admission to a pupil who is not of the gender concerned. Section 7(3) (c) provides that schools where the objective is to provide education in an environment that promotes certain religious values, can admit a student of a particular religious denomination in preference to other students or that such a school can refuse to admit a student who is not of that denomination, provided it can prove that this refusal is essential to maintain the ethos of the school. The Head provides that schools to which equality legislation exemptions apply will reflect those exemptions in their admission policy statement.



**Head 4    Amendment of Section 33 to set out the powers of the Minister to make regulations in relation to the admission of students to schools.**

Section 33 of the Education Act will be amended by the substitution of subsection (g) with a new subsection (g) below and by inserting the new subsection (m) below after subsection (l).

33(g)

- (i) admission of students to schools, to special classes in schools, to centres for education and in the case of a school that provides for the teaching of subjects on the curriculum through Irish for some of its students, the admission of students to receive instruction on the curriculum through Irish in that school and;
- (ii) without limiting the generality of this section and subject to this Act and the provisions of the Equal Status Act, 2000, matters relating to the drafting, content, publication and review of admission policies and in relation to the practices, procedures and timeframes for the admission of students.

33 (m) Without limiting the generality of subsection (g), for the purpose of promoting transparency in and equality of access to education, regulations under this section may-

- (i) Require that a Board of Management shall, before approving an admission policy, consult with the patron, the parents of students attending the school, the staff of the school and any other persons or groups of persons that the Minister considers it appropriate to consult;
- (ii) Require that the admission policy of a school shall:

- (I) set out the characteristic spirit and general objectives of the school;
  - (II) set out the position of the school in relation to its arrangements for upholding the constitutional rights of any students who do not wish to attend religious instruction;
  - (III) set out the school's policy regarding the admission of and participation by students with disabilities or students who have special educational needs;
  - (IV) include, other than in the case of fee-charging post-primary schools that are recognised by the Minister, a declaration that no fees or contributions will be sought or charged as a condition of application for admission to the school or of continued enrolment in the school following admission;
  - (V) be consistent with any agreement that has been made with the Minister in the context of recognition of the school or any agreement that has been made with the Minister in the context of the provision of any infrastructure to the school;
  - (VI) set out the selection criteria to be applied where the number of students seeking admission is greater than the number of places being made available by the school;
  - (VII) set out the manner and sequence in which the selection criteria will be applied;
  - (VIII) set out the admission arrangements that apply to the admission of students to classes or years other than the school's intake group and to the admission of students after the commencement of the school year in which admission is sought;
  - (IX) set out the arrangements whereby an applicant may appeal against a decision to refuse admission.
- (iii) Prescribe the format in which a school's admission policy shall be published and/or made available to parents and others;
  - (iv) Provide, subject to the provisions of the Equal Status Act 2000, for selection criteria that a school or schools will be permitted to apply where the number

of students seeking admission is greater than the number of places being made available by the school;

- (v) Provide, subject to the provisions of the Equal Status Act 2000, for selection criteria that a school or schools will not be permitted to apply where the number of students seeking admission is greater than the number of places being made available by the school;
- (vi) Prescribe that the admission policy of a school shall provide for an offer of enrolment to be made to all students seeking admission save:
  - (I) Where the number of students seeking admission is greater than the number of places being made available by the school, or
  - (II) In accordance with Section 7 of the Equal Status Act, 2000; or
  - (III) Where the student or his or her parents do not agree to confirm in writing that the school's Code of Behaviour is acceptable to them and that they shall make all reasonable efforts to ensure compliance with such code, or
  - (IV) Where An Garda Síochána or the Health Service Executive has provided in writing to the school its opinion that the admission of the student could have a seriously detrimental effect on the safety of other students and or staff of the school
- (vii) Prescribe the format, content and timeframes in respect of which notice of a school's admission process shall be published;
- (viii) Prescribe matters relating to the format, content, process or timeframes in respect of any or all of the following:
  - (I) The acceptance of applications for admission;
  - (II) The notification of decisions to applicants;
  - (III) The acceptance of offers of admission and
  - (IV) The making of appeals against refusals to enrol and
  - (V) The notification of decisions on appeals.
- (ix) Prescribe matters in relation to the format and content of an application for admission, any information that may or may not be requested by schools from applicants and the nature of any contact by schools with students or parents, including interviews that may be permitted or not permitted prior to a school making a decision on an application for admission;

- (x) Require that in making a decision in respect of an application for admission, only information relevant to the school's admission policy shall be taken into account;
- (xi) Require that an applicant for admission shall be notified in writing of the decision on his/her application and such notification shall include the reasons for that decision;
- (xii) Prescribe matters relating to the admission of students after the commencement of the school year in which admission is sought;
- (xiii) Prescribe matters relating to the admission of students other than to the intake group of the school or centre for education

### **Explanatory Note**

This Head deals with providing for regulations on admission to a school. While section 33(g) of the Education Act 1998 already provides for regulations for the admission of students to schools, this amendment will make clear what such regulations can cover.

The purpose of this amendment to section 33 is to insulate any regulations from challenge on the grounds that the Minister may be exceeding his powers under 33(g) by making clear in primary legislation what the regulations will cover. The draft Head identifies a number of specific admission related matters that may be regulated by the Minister. The precise breakdown of how these specific issues will be dealt with in primary (the Act) and secondary legislation (regulations under the Act) will be addressed further at drafting.

The draft Head provides that regulations made by the Minister may extend to admission to centres for education, special classes within schools and to admission to an all-Irish stream (or Aonad) within schools that make such provision.

This Head also specifies that regulations prescribe matters relating to the drafting, content, publication and review of school admission policies and in relation to the practices, procedures and timeframes operated by schools for the admission of students. Additionally it specifies that the Minister for the purpose of promoting transparency

and equality of access to education may regulate in relation to a number of matters including the following:

- To require a Board to consult with the patron, parents and others before approving an admission policy
- To require an admission policy to include certain elements such as details of the characteristic spirit and objectives of the school, the school's arrangements for those pupils who do not wish to attend religious instruction, a declaration that no fees will be charged (except for recognised fee-charging post-primary schools), the school's policy regarding the admission and participation of pupils with disabilities or special educational needs, details of the selection criteria, how the selection criteria will be applied, the arrangements for appeals and that the admission policy shall be consistent with any agreement made with the Minister in the context of the school's recognition or the provision of infrastructure to the school
- The format in which the policy must be published
- Selection criteria that will be permissible and non-permissible
- Provide that schools must offer a place to all applicants except where the number of applicants is greater than the number of places or where an exemption under the Equal Status Act 2000 applies or where the parents or student do not agree to the Code of Behaviour or where An Garda Síochána or the HSE has provided an opinion in writing that the admission of a pupil could have a seriously detrimental effect on the pupils or staff of the school.
- Prescribe the format and content of the application form, the information that may be requested and the nature of any contact with parents or pupils (such as interviews) that will be permissible or not permissible prior to deciding on an application
- Prescribe matters relation to the format, content, process and timeframes for the application, decision and appeals process.
- Require that applicants are notified in writing of decisions and the reasons for same.
- Matters relating to the admission of students to schools after the commencement of the school year in which admission is sought or to classes/years other than

the usual intake group (the intake group is typically junior infants at primary level or first year at post primary).

## **Head 5 Repeal of Section 29 (1) (c) of the Education Act, 1998**

Section 29 (1) (c) of the Act of 1998 is hereby repealed.

### **Explanatory Note**

This Head provides for the removal from Section 29 of the Education Act 1998, of the right of appeal to the Secretary General of the Department against a decision by a school to refuse admission. The statutory framework for admission provided for by this legislation and its associated regulations will provide a more comprehensive framework for dealing with issues that arise in relation to the admission of students and for dealing with grievances in relation to admission to schools.

This new statutory framework will provide for appeal structures that are less burdensome, less adversarial and more cost-effective than the existing section 29 procedures. The framework will also bring about greater transparency generally in relation to policies and procedures for enrolment and should thereby reduce the levels of litigation.

The Education Act, 1998, if this amendment is adopted, will continue to provide for an appeal under Section 29 against a decision to permanently exclude a student from school or to suspend a student from attendance at school. The period of suspension to which this right of appeal should apply has never been prescribed under the Education Act, 1998 and it is proposed to set the period as a suspension of 20 days or more. Some consequential amendments of a technical nature may also be required to the 1998 Act and the Education (Miscellaneous Provisions) Act 2007 and will be addressed at drafting.

## **Head 6    Function of a Principal to implement a school's admission policy**

Amend Section 23 (2) of the 1998 Education Act by substituting the following for subsection (2) (a)

**(a)** be responsible for the day-to-day management of the school, including guidance and direction of the teachers and other staff of the school and the implementation of the school's admission policy, and be accountable to the board for that management

### **Explanatory Note**

This Head makes clear that it is a function of the school Principal as part of his/her day-to-day management of the school to implement the admission policy of the school. This provides that the school Principal is responsible for carrying out the admission process for schools including making decisions on individual applications. It ensures that where an appeal against a decision to refuse enrolment is made, it can be heard by the Board of the school. The Principal will be accountable to the Board for this function. The approach ensures separation of the decision making and appeal process at school level and that an appeal will not be heard by the same entity that made the decision.

## **Head 7    Appeals to the Board of Management against refusals to enrol**

(1) Where an application for enrolment has been refused, the applicant may appeal that decision to the Board within such period as shall be prescribed by the Minister.

(2) Appeals made under this Head, shall be heard and determined in accordance with procedures that shall be prescribed by the Minister following consultation with bodies representative of patrons, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers.

(3) On the hearing of an appeal under section (1), the Board may decide to—

(a) Uphold the appeal or

(b) Dismiss the appeal

and this decision is final.

(4) The Board shall, within such period as shall be prescribed by the Minister, notify the applicant in writing of its decision in relation to any appeal made under this Head and such notice shall specify the reasons for the Board's decision by reference to the application of the admission policy of the school concerned.

(5) Where an appeal under this section has been made to the Board, the Principal is precluded from participating in the Board's decision making in respect of that appeal.

### **Explanatory Note**

This Head provides for the right of appeal to the Board of Management of a school against a decision to refuse enrolment. The Head provides that the Minister will prescribe the procedures that will apply to such appeals. It also provides that the Board must either uphold or dismiss such an appeal and that decision will be final. The Head provides that the Board must notify the appellant in writing of its decision and its



reasons for same by reference to the application of the school's admission policy. It also provides that the Principal is precluded from participating in the Board's decision on an appeal.

## **Head 8    Repeal of Section 10 of the Act of 2004**

Section 10 of the Act of 2004 is hereby repealed.

### **Explanatory Note**

This Head provides for the repeal of Section 10 of the Education for Persons with Special Educational Needs Act, 2004 (EPSEN Act) which provides the NCSE with the power to designate a particular school for a child with special educational needs and provides that the designated school must admit the child concerned. Section 10 has not been commenced to date. It is not proposed to remove this power from the statute books but to re-frame it in the context of the wider provisions within Head 9. In this regard, the provisions of Heads 8 and 9 are inter-related.

**Head 9      Power of the National Educational Welfare Board and the National Council for Special Education to designate a school and associated appeal mechanisms**

(1) In the case of a child with special educational needs, the National Council for Special Education (hereinafter referred to as the Council) may—

- (a) of its own volition, or
- (b) at the request of the parents of that child, where the Council is of the opinion that the parents of the child, after having made all reasonable efforts, have failed, for reasons related to the child's special educational needs, to obtain any school placement for that child

designate the school or centre for education which a child with special educational needs or, in the case of a request under paragraph (b), the child referred to in that paragraph is to attend for the time being and that school or centre for education as the case may be, shall admit the child as a student upon being directed by the Council to do so.

(2) In making a designation under section (1), the Council shall have regard to the educational needs of the child concerned, the wishes of the child's parents and the capacity of the school, or centre for education as the case may be, to accommodate the child and to meet his or her educational needs, including that capacity when the school or centre for education as the case may be, has such additional resources made available to it as the Council, acting in accordance with section 20(3) (a) of the Act of 2004, recommends to the Minister

(3) Other than in the case of a child in respect of whom a designation under section (1) may be made, the National Educational Welfare Board (hereinafter referred to as the NEWB) may,

- a) of its own volition and where the NEWB is of the opinion that a child has no school place or
- b) at the request of the parents of that child, where the NEWB is of the opinion that the parents of the child, after having made all reasonable efforts, have failed to obtain any school placement for that child,

designate the school or centre for education which a child is to attend for the time being and that school or centre for education as the case may be, shall admit the child as a student upon being directed by the NEWB to do so.

(4) In making a designation under section (3), the NEWB shall have regard to the availability of places in the schools and centres for education in the locality and the placement that in its view is in the best interests of the child.

(5) Where –

- (a) a school is designated under section (1) or section (3) in respect of a particular child, the Board of Management of that school may, within 2 weeks from the date that the school is informed of the designation, appeal against such designation to a committee appointed under section (7).
- (b) a centre for education is designated under section (1) or section (3) in respect of a particular child, the Board of Management or relevant

managerial authority of that centre for education may, within 2 weeks from the date that the centre for education is informed of the designation, appeal against such designation to a committee appointed under section (7).

(6) Where -

(a) the Council fails or refuses to make a designation under section (1) at the request of parents under subsection (b) of section (1) the parents may appeal against that failure or refusal to a committee appointed under section (7).

(b) the NEWB fails or refuses to make a designation under section (3) at the request of parents under subsection (b) of section (3), the parents may appeal against that failure or refusal to a committee appointed under section (7).

(7) For the purposes of the hearing and determination of an appeal under sections (5) and (6), the Minister shall appoint one or more than one committee (hereinafter referred to as an "appeals committee") and the appeals committee shall act in accordance with such procedures as may be determined from time to time by the Minister and such procedures shall ensure that an appeal will be heard and determined within 3 weeks of the date of the receipt of the appeal by the committee.

(8) The Appeals Committee shall consist of a chairperson and such number of ordinary members as may be determined, by the Minister.

(9) The chairperson and ordinary members of the Appeals Committee shall be appointed by the Minister from among persons who have a special interest in or knowledge of education and shall in the case of any appeal concerning a child with special educational needs include at least one person who has a special interest in or knowledge of the education of persons with special educational needs

(10) The term of office of the chairperson and the ordinary members of the Appeals Committee shall be for such period as shall be determined by the Minister.

(11) The chairperson and ordinary members of the Appeals Committee shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.

(12) On the hearing of an appeal under section (5) –

(i) the Appeals Committee may—

(a) uphold the appeal and cancel the designation or

(b) dismiss the appeal

(ii) the Appeals Committee shall, in reaching its decision, dismiss the appeal save where it is satisfied that -

(a) the school or centre for education has established that the decision of the NEWB or the Council, as the case may be, is unreasonable or

(b) in the case of a school or centre for education to which the provisions of Section 7(3) (c) of the Equal Status

Act, 2000 apply and where the child is not of the relevant denomination concerned, the school or centre for education has proven that refusal to admit the child is essential to maintain the ethos of the school.

(13) On the hearing of an appeal under section (6), the Appeals Committee may—

- (a) Uphold the appeal and give a direction to the Council or the NEWB as the case may be, requiring it to designate under section (1) or section (3) as the case may be, a school or centre for education or,
- (b) dismiss the appeal.

### **Explanatory Note**

The provisions of Heads 8 and 9 are inter-related. As previously outlined, Head 8 provides for the repeal of the yet un-commenced Section 10 of the EPSSEN Act, 2004. Head 9 re-frames the powers previously set out in Section 10 of the EPSSEN Act 2004 i.e. providing that the NCSE may designate a particular school for a child with special educational needs. However, Head 9 also puts in place new provisions enabling the NEWB to designate schools in certain limited other circumstances and provides that an Appeals Committee would be appointed to deal with appeals that might arise in relation to designations by either the NCSE or the NEWB.

### **Designation by NCSE**

This Head provides for the NCSE to designate a school to which a child with special educational needs will attend and that a school so designated must admit that child. Designation can be at the discretion of the NCSE or at the request of the parents of a child with special educational needs where, for reasons related to that child's special educational needs, no school place can be found. In making a designation the NCSE shall have regard to the educational needs of the child concerned, the wishes of the child's parents and the capacity of the school to accommodate the child and to meet his

or her educational needs, including that capacity when the school has such additional resources as the Council recommends. Such resource recommendation must be made in accordance with Ministerial policy in relation to the education of children with special educational needs.

### **Designation by NEWB**

While the provisions regarding NCSE designation will provide for school designation in the case of a child with special educational needs, the Head also addresses the situation of a child who does not have a special educational need and for whom no school place can be found. In these circumstances, the Head provides that the NEWB may designate a school (or centre for education, if deemed appropriate). This provision applies only to circumstances where no school place is available (i.e. not to situations where a place in the school of the parents' choice is unavailable) and where a designation by the NCSE does not apply.

Designation can be at the discretion of the NEWB or at the request of the parents, where the parents have been unable to secure a school placement. In making a designation, the NEWB shall have regard to the availability of places in the schools in the locality and the placement that in its view is in the best interests of the student.

### **Appeals against designations**

The Head also provides for the establishment of an appeal committee(s) to consider and determine appeals in relation to designations. An Appeals Committee so established will consider appeals that arise from either NCSE or NEWB designations.

A designated school (whether designated by the NEWB or the NCSE) may appeal against the designation to the Appeals Committee. Under this provision, an appeals committee is required to dismiss the appeal save where it is satisfied that the school or centre for education has established that the decision of the NEWB or the NCSE, as the case may be, is unreasonable or in the case of a school to which the exemption under section 7(3)(c) of the Equal Status Act applied (i.e. a denominational school) and where the pupil is not of the denomination concerned, the school has proven that refusal to admit the pupil is essential to maintain the ethos of the school.

Parents may also appeal if the NCSE or NEWB as applicable, refuses or fails to designate a school.

### **Head 10 Amendment of Section 26(1) of the Education Welfare Act 2000**

In this Head “Board” means the National Educational Welfare Board

Section 26 of the Education Welfare Act 2000 is hereby amended by substituting the following paragraph for subsection (1)

- (1) (a) The Board may appoint a person independent of the Board to appeal a decision to which paragraph (a) of subsection (1) of section 29 of the Act of 1998 applies and accordingly a reference in the said subsection (1) to “parent of the student” or “student” shall be construed as including a reference to the person appointed by the Board in accordance with this subsection and
- (b) The function of a person appointed under (a) shall be to make an appeal under this section having regard to the best interests of the student concerned.

### **Explanatory Note**

Under Section 26 (1) of the Education Welfare Act, 2000 the NEWB has the right to take an appeal under section 29 of the Education Act 1998 against a decision by a school to refuse admission to a pupil or a decision by a school to permanently exclude a student from a school. Under Head 5 of this Bill the right to appeal against the decision by a school to refuse admission is being removed from section 29 of the 1998 Act.



This Head amends Section 26(1) of the Education Welfare Act, 2000 by removing the remaining right of the NEWB to take an appeal under Section 29 of the 1998 Act against a decision by a school to permanently exclude a student from a school. This is considered appropriate given the new power under Head 9 for the NEWB to designate a school in circumstances where, no school placement is available to a child. In its place this Head provides that the NEWB may appoint a person independent of the NEWB to undertake this role. The original provision enabled the NEWB to act on behalf of a student in cases where the parents might not have the capacity to do so. Given the potential conflict between this role and that of school designation, this new provision enables the NEWB to appoint an independent person to take a section 29 appeal on behalf of a child excluded from a school. The Head provides that a person appointed to make such an appeal will be required to act in the best interests of the child.

## **Head 11 Power to require co-operation between schools**

(1) The Minister may, following consultation with the patron(s) and Boards of Management of the schools concerned, direct two or more schools to collaborate and co-operate in relation to their practices or procedures for the admission of students where:

- (a) the Minister is of the opinion, having regard to the effective and efficient use of resources, that it is in the best interests of the students of a locality, that a common admission process should operate or
- (b) the Minister is of the opinion that it is necessary in order to accommodate students in the case of a school closure.

(2) Where the Minister issues a direction to two or more schools under section (1) the Minister -

- (c) may determine the process that will apply to how the admission policies as determined by the individual schools can be co-ordinated and
- (d) shall, during the first year following the issue of that direction, consult with the schools concerned in relation to the period of time during which the direction shall remain in force.

### **Explanatory Note**

This Head will provide a new power that will allow the Minister, having consulted with the patron(s) and Boards of the schools concerned, to direct two or more schools to operate a common admission process where the Minister is of the opinion that this

would be in the best interests of the students of a locality or to co-operate in relation to their admission practices and procedures or in order to accommodate students in the case of a school closure. This Head will enable the Minister to address a situation where despite there being sufficient school places across the schools within a particular area, a cohort of pupils in an area are unable, for whatever reason, to secure a school place. Where it is considered that a co-ordinated approach in relation to the timelines for enrolment will address this issue, this power ensures that it can be put in place and that all applicants have an equal opportunity to apply to any or all of the schools concerned. It will help ensure transparency and fairness for both schools and applicants and prevent “soft barriers” to enrolment. In relation to school closures, it is normally the case that arrangements are put in place at an early stage to ensure that pupils affected by a closure are accommodated in a timely and structured manner in other schools. However, where there is an unexpected school closure that results in significant and immediate issues in relation to continuity of provision for pupils and where a solution is not emerging at local level, it is important that the Minister would be able to promptly and adequately address this issue.

In both of these scenarios, this approach would be more appropriate than having to rely on the provisions of Head 9 (designating a particular school) for each of the individual pupils concerned.

The Head also provides that, where the Minister directs that a common admission process is operated, the Minister may determine the process for same. It is not the intention, in such a scenario, that the schools concerned would be required to apply a common policy. Rather that each school could continue to apply its own policy and that only the process would have to operate in co-operation with other schools. During the first year of the operation of such a co-ordinated admission process, the Minister will consult with the schools concerned in relation to how long the arrangement will remain in place.

There has been one notable intervention in an area where admission had become problematic and where the schools operate a common enrolment process. The purpose of this provision is to ensure that where such an approach is warranted it can proceed with statutory authority.

This Head also provides a power for the Minister to direct two or more schools to operate a common admission process where necessary in the event of school closure.

**Head 12 Power to enable appointment by patron of person independent of the school to operate the school admission policy**

(1) Where the patron is of the opinion that the admission policy of a school is not being operated in accordance with this Act or any regulations made in accordance with this Act -

the patron may, with the consent of the Minister, appoint such person or persons independent of the school, as the patron deems fit to operate the lawful admission policy of the school in accordance with the requirements of this Act or any regulations made in accordance with this Act for such period as the patron deems appropriate.

(2) Where a patron proposes to appoint a person or persons in accordance with subsection (1), the patron shall inform the Board of his or her intention to do so and shall consider any representation made to him or her on or on behalf of the Board within two weeks of informing the Board.

(3) Where the Minister is of the opinion that the admission policy of a school is not being operated in accordance with this Act or any regulations made in accordance with this Act -

the Minister may, by notice in writing, require the patron to appoint such person or persons independent of the school, as the patron deems fit to operate the lawful admission policy of the school in accordance with the requirements of this Act or any regulations made in accordance with this Act for such period as the Minister deems appropriate.

(4) Before the Minister serves a notice as provided for in subsection (3), he or she shall inform the board and the patron of his or her intention to do so and shall consider any representations made to him or her by or on behalf of the board or the patron within two weeks of informing the board and the patron

(5) Any person or persons appointed under this section shall be afforded every facility and co-operation by the patron, Board, the teachers and other staff of the school, including access to all relevant records, to perform his or her functions.

(6) Except as provided by this Act, no action shall lie against a person appointed under section (1), in respect of anything done by that person in good faith and in pursuance of this Act or any regulations made by the Minister under this Act.

### **Explanatory Note**

This Head provides for the patron to appoint a person independent of the school to carry out the operation of the admission policy where the patron is of the opinion that the operation of the admission policy is contrary to the requirements of the legislation.

The Head also provides that the Minister may require a patron to appoint a person independent of the school to carry out the operation of the admission policy where the

Minister is of the opinion that the operation of the admission policy is contrary to the requirements of the legislation

The Head provides that the patron, Board and staff will be required to co-operate fully with any person so appointed and indemnifies that person in respect of any potential legal liability in respect of anything done by him/her in good faith and in accordance with the Act or any regulations under this Act.

This approach provides for the continuation of existing practices whereby admission policies and procedures as a general rule operate successfully at school level but makes provision for the patron to intervene in the small number of cases where problems arise. This provision provides the patron with the power to remove from the control of the school, the operation of the admission policy where the patron is of the opinion that the policy is not being operated in accordance with legislation. It provides that the Minister may also direct a patron take such action where the Minister is of the opinion that the policy is not being operated in accordance with the legislation.

The Education Act, 1998 at present provides for the dissolution of a Board of Management by the patron. This proposed provision mirrors that provision except that it allows for the continuance in office of the Board. If enacted, it will provide the option of a narrower sanction than the existing sanction of dissolution of the Board.

**Head 13 Power to enable appointment by the Minister of person independent of the school to operate the school admission policy**

1.
  - (a) Where –
    - (i) the patron has refused to discharge a direction issued by the Minister under Head 12 or;

(ii) notwithstanding any steps taken by the patron on foot of a direction issued by the Minister under Head 12, the Minister considers that there has been a failure to rectify the matters that were the subject of that direction

the Minister may appoint a person to rectify the matters set out in that direction and reported on in the report sought and prepared under subsection (c) of this section and such appointment shall not extend beyond the period necessary to rectify the matters concerned.

(b) A person appointed under subsection (a) shall –

- (i) not alter the operation of the admission policy of the school except insofar as it is necessary to rectify any matters that were the subject of the Minister's direction to the patron under Head 12 and reported on in the report sought and prepared under subsection (c) of this section and
- (ii) have regard, where applicable, to the provisions of sections 7(3)(a) or 7(3)(c) of the Equal Status Act.

(c) Where the Minister proposes to appoint a person under subsection (a) –

- (i) the Minister shall seek a report on the matter, incorporating the views of any independent person appointed under Head 12 of this Act, and the

procedures applying to such a report shall accord with those set out under Section 19 of the Education Act, 1998.

- (ii) If having considered a report prepared under this subsection, the Minister is of the view that the appointment of a person under subsection (a) is warranted, the Minister shall notify the Patron and the Board of that view and provide the Patron and the Board with a copy of the report concerned.
- (iii) The Minister shall allow a period of one month from the date of issuing a notice under (ii) of this subsection for the patron or the Board to make any representations that the patron or the Board may wish to make to the Minister.
- (iv) If the Minister, after considering any representations received within a period of one month from the date of issuing a notice under (ii) of this subsection, decides that the appointment of a person under subsection (a) of this section is warranted, the Minister shall
  - i. inform the patron and the Board of this decision and the reasons therefor and
  - ii. seek court approval to exercise the power conferred on him under subsection (a) and in doing so shall submit to the court a copy of the report prepared under this subsection, a copy of every notice



issued by the Minister under this subsection and a copy of any representations made to the Minister under this subsection.

(d) Any person appointed under subsection (a ) shall be afforded every facility and co-operation by the patron, the Board, the teachers and other staff of the school, including access to all relevant records, to perform his or her functions

(e) Except as provided by this Act, no action shall lie against a person appointed under section (a), in respect of anything done by that person in good faith and in pursuance of this Act or any regulations made by the Minister under this Act.

### **Explanatory Note**

This Head provides a power for the Minister to appoint a person independent of the school to carry out functions relating to school admission. The intent of the regulatory framework is to have matters resolved within the governance structure of the school, including the Patron. The intervention of the Minister as provided for in this Head is intended to be limited and a power of last resort in line with the principle of subsidiarity that applies to the overall proposals.

Exercising this power would completely remove admission policy and its implementation from the control of the Board and the patron and would serve as a strong deterrent to any wrongdoing.

The intervention is restricted to a situation where the Patron of a school has simply refused to carry out a direction of the Minister under Head 12 or where the Patron's attempt to comply with the direction fails to rectify the matters that were the subject of the direction. Furthermore the power created under the Head will not be utilised until the

Minister has first commissioned a report on the position, considered any representations the Patron or the Board have made and has sought court approval to exercise the power.

The role of the independent person appointed is confined to the matters specified in the direction under head 12. This means that the person appointed cannot intrude into the conduct of admission policy by the school in any wider manner or introduce other issues *de novo*.

The Head confines the period of intervention to no more than is necessary to bring about rectification. That person is also required to have regard to the exemptions (for single sex and denominational schools) of the Equal Status Act where such are applicable.

The Head also provides that the patron, Board and staff will be required to co-operate fully with any person appointed and indemnifies that person in respect of any potential legal liability in respect of anything done by him or her in good faith and in accordance with the Act or any regulations under this Act.

#### **Head 14 Repeal of Section 19 of the Education Welfare Act, 2000**

Section 19 of the Act of 2000 is hereby repealed.

#### **Explanatory Note**

This Head provides for the repeal from Section 19 of the Education (Welfare) Act, 2000, which states that a school shall not refuse enrolment unless it is in accordance with its admission policy, that the parent shall provide such information to the school as may be prescribed by the Minister and having done so, the school shall make a decision on the application for enrolment within 21 days.

The statutory framework for admission provided for by this legislation and its associated regulations will provide a comprehensive framework within which issues

such as the circumstances in which decisions to refuse enrolment may be made, information to accompany applications and timeframes for decisions will be addressed.